

## Direction to Fix Guidelines for Notifications to the VBA (for the relevant building surveyor)

### Direction to Fix Notification - s37K of the Building Act 1993 (Act)

If a builder fails to comply with a direction to fix (DTF) issued by the relevant building surveyor (RBS), then the RBS must notify the Victorian Building Authority (VBA) of the matter.

*Pursuant to s37K(2) of the Act the relevant building surveyor must refer a written direction to fix to the VBA within 7 days after the final date for compliance specified in the direction.*

After the VBA has been notified of the DTF the RBS is still responsible for ensuring compliance is achieved, and should consider further enforcement action, such as a building notice or building order.

### Written Notice to the VBA

The following information would assist the VBA in assessing any DTF notifications:

- (a) Confirm that the time frame given for compliance on the DTF has lapsed and the referral is within the 7-day timeframe.
- (b) Advise as to how the DTF was served.
- (c) Confirm that no occupancy permit or certificate of final inspection has been issued. If additional building work is required, confirm that there is a valid building permit for the work.
- (d) Explain how you are aware that the DTF has not been complied with.
- (e) Confirm whether the DTF has been progressed to a building notice or building order.
- (f) If there is a concern to life safety, confirm that the Municipal Building Surveyor at the relevant council has been made aware.
- (g) Provide the following documentation:
  - Copy of the DTF;
  - Copy of the building permit;

- Method and proof of service, e.g. email, registered posted, personal service;
- Copy of building notice or building order (if applicable); and
- Copy of reference documents (if applicable).

### What happens next

Once all the correct information is received, the DTF is assessed with the following outcomes:

- (1) If the DTF is determined to be compliant with the Act and Regulations, the VBA will take appropriate action according to the Act, this may include disciplinary action and/or prosecution (the maximum penalty for failure to comply with a written DTF is 500 penalty units).
- (2) If the DTF is determined to be non-compliant with the Act and Regulations, then the VBA will send an educational letter to the RBS with a recommendation to cancel the DTF and to re-commence the process to resolve the situation or progress the matter to building notice or building order. The VBA will take no further action.

### Life safety

If the RBS is concerned that there is a possible life safety matter (i.e. swimming pool, swimming pool barrier, balcony, balustrade, egress issues, deficient smoke alarms/detectors, inadequately secured building elements, etc.), the RBS should progress the enforcement action and advise the Municipal Building Surveyor at council of the concern.

### Compliance of building work after the referral of a DTF

If the builder has complied with the DTF after the VBA has been notified, please advise the VBA and property owner of the compliance with the DTF.